

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SECOND APPEAL No. 252 of 1985

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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PATEL SHAMJI BHAGWANJI - Appellant(s)
Versus
PATEL HIRABHAI VASTABHAI - Defendant(s)

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Appearance :

MR ND NANAVATI for Appellant(s) : 1,
MR JJ YAJNIK for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 06/09/2006

ORAL JUDGMENT

1. Heard the learned counsel for the appellant. None for the respondent.
2. The appeal, at the instance of the defendant who was successful in the trial court but lost in the appeal, has been admitted for hearing the parties on the following substantial question of law;
 - (i) Whether the suit is barred by limitation?
3. The facts in nutshell are that the plaintiff who had certain business dealings with the defendant was giving some books credit to the defendant, waited repayment for some time, but almost after a lapse of 35 months, required the defendant to issue written acknowledgment of the Statements of Accounts. The plaintiff's son purchased the Stamp, Statement of Accounts were

recorded on the said document and according to the plaintiff, the defendant had put his thumb impression on the said document in presence of the plaintiff, his son and the witnesses.

4. As the defendant did not make payment of the money, the plaintiff filed the suit. The defendant after service of the notice inter-alia submitted that he had not executed Exh.20, he did not affix his thumb impression and he was not answerable to the claim of the plaintiff. The trial court after recording the evidence and hearing the parties, dismissed the suit, but on appeal, learned first appellate court relied upon the statement of the plaintiff, his witnesses and also relied upon Exh.20, treating it to be an acknowledge and granted a decree in favour of the plaintiff. The defendant, aggrieved by the said judgment and decree, is before this Court.

5. The learned counsel for the appellant submits that the learned first appellate court was not justified in placing reliance upon Exh.20 and the statement of the plaintiff and his witnesses, especially when the independent witnesses were not examined. He also submits that if the

defendant was all through out contending that he had not put his thumb impression on the document, then the burden was extra heavy upon the plaintiff to prove the genuineness of the thumb impression. According to him, as Exh.20 was not executed by the defendant, the suit was patently barred by limitation.

6. The learned first appellate court has recorded a finding of fact, after placing reliance upon the statement of the plaintiff and his witnesses that said document was executed and the defendant had put his thumb impression on the said document. The learned first appellate court has given cogent reasons for placing reliance upon the statement of the plaintiff and his witnesses. So far as the question of non-examination of other independent witnesses is concerned, the same is not going to make much difference, because the courts rely upon the quality of the evidence in place of quantity of the evidence. In a given case, if the court relies upon one single witness than such finding would again be a finding of fact. In a given case, the court may give reasons to discard the testimony of 10 persons. The present is a case where the court below thought and held

that the plaintiff and his witnesses were reliable. If that be so, the suit cannot be held to be barred by limitation. The question is answered against the interest of the appellant. It is held that the suit was within the limitation. The appeal is dismissed. However, there shall be no order as to costs.

7. Let a decree be framed accordingly.

(R.S.GARG,J.)

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